IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.4099 of 2004

Shyamsunder Ramratan Jaju & Ors...Petitioners

Versus

Director of Town Planning & Ors..Respondents

WITH

WRIT PETITION NO.4345 OF 2004

Sitaram Bhadrinarayan Maniyar & Ors..Petitioners

Versus

Director of Town Planning & Ors..Respondents

Mr. C.G. Gavnekar, with Ms. Deepa Sawant for the Petitioners
Ms. S.S. Bhende, AGP for Respondent Nos. 1 to 5 and 7
Mr.S.M. Sabrad, for Respondent No.6.

CORAM : F.I. REBELLO & S.P. KUKDAY,JJ.

DATED : 4th May, 2005

P.C.

. Rule. By consent heard forthwith.

2. Writ Petition No.4099 of 2004 is by persons claiming ownership of lands identified under Survey No.230, Hissa Nos. 2, 3, 4 and 5as also Survey No.236 Hissa No.2,3,4 and 6. This land forms part of Site No.115 Final Plot No.95. The District Judge as the Authority had sought acquisition by notice of 14th January, 1995.

3. Writ Petition No.4345 of 2004 are by persons claiming ownership in property identified under Scheme No.236/1 and 236/5. This land also forms part of Site No.115 Final Plot No.95.

4. A Writ Petition had been filed before this Court being Writ Petition Stamp No.4930 of 2003. The owners of the land were claiming ownership in respect of Survey No.237/4 which was also forming part of Sit No.115 Final Plot No.95. The petition thereafter came to be numbered as Writ Petition No.6175 of 2003. In that petition the petitioners had challenged the Notification dated 16th March, 2003 issued under Section 126 of the M.R.T.P. Act. The State Government through the Advocate General made a statement that the said notification dated 16th March, 2003 without prejudice to the State's right to acquire under the Land Acquisition Act would be withdrawn. Similarly, in respect of the Notification dated 26th March, 1998 issued under Section 4 of the Land Acquisition Act a concession was made on behalf of the State by the learned Advocate General that it had lapsed due to passage of time. It appears that the petitioners therein filed Special Leave Petition before the Apex Court being Special Leave Petition (Civil) No.5212 of 2004. By order dated 17th December, 2004 the Apex Court passed the following order:-

> "The matter is kept pending to be listed immediately after the Summer Vacation of 2005. In the meanwhile, the proceedings consequent on the declaration under Section 6 of the Land Acquisition Act should be completed."

In other words it appears that the Notification under Section 4 had already been issued before the order passed by the Apex Court. A copy of the said Notification has been

placed before us. We find that the said Notification is only in respect of Survey No.237/4 and does not cover the Survey Nos. which are the subject matter of the present 2 Writ Petition.

6. The Reliefs sought by the petitioners are for a declaration that the property is no longer reserved and to delete the site No.115 from revised development plan. It may be mentioned that the land is reserved for a District Court. It is set out that in view of the earlier order of this Court of withdrawing the Notification dated 16th March, 2003 and in view of the Notification under Section 4 dated 26th March, 1998 having lapsed on account of non-issuance of declaration under Section 6 of L.A. Act within the statutory period the land is no longer under reservation.

7. On behalf of the Respondent State an affidavit has been filed by Sarita Narke, Special Land Acquisition Officer. In the said affidavit it is stated that the petitioner had served purchase notice dated 13th June, 1995 after receipt of proposal of acquisition from the acquiring body. In other words it is sought to be contended that proceedings for acquisition had already commenced. It is also set out that Survey No.237/4 was dereserved and released from reservation. However, in view of the order passed by the Apex Court the land is under acquisition. It is, therefore, claimed that the order passed in Writ Petition Stamp No.6175 of 2003 would not apply in so far as the petitioners lands are concerned.

8. We have considered the contention as urged on behalf of the parties. Admittedly no declaration under Section 6 within the time set out under the Land Acquisition Act after issuance of notification under Section 4 dated 26th March, 1998 was issued. Consequently the said Notification must lapse. In so far as the Notification dated 16th March, 2003 under Section 126 of M.R.T.P.Act the statement made by the learned Advocate General on behalf of the State Government cannot be restricted only to Survey No.237/4. The statement was that the notification would be withdrawn. No fresh notification under the Land Acquisition Act has been issued in so far as the properties are concerned.

9. However, considering what was set out in the order of this Court dated 1st October, 2003 that the respondents proposed to initiate proceedings for acquisition under the provisions of the Land Acquisition Act and considering the direction by the Apex Court as also as the land was reserved for District Court we think it proper to pass the following order;-

. The Respondent No.5 through its officers to take steps at any rate within six months from today based on the proposal sent by the District Court as set out in the affidavit of Sarita Narke. If the notification under Section 4 is not issued by the Respondent No.5 within the time granted, the petitioners will be free to apply for development of the property in accordance with the Rules and Regulations.

. Rule made absolute accordingly in both the petitions.

No order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)